

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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: SEC, : 05-CV-5231
: :
: Plaintiff, : September 23, 2011
: :
: v. : 500 Pearl Street
: : New York, New York
: AMERINDO INVESTMENT ADVISORS, INC., :
: et al., :
: :
: Defendants. :
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TRANSCRIPT OF CIVIL CAUSE FOR PRETRIAL CONFERENCE
BEFORE THE HONORABLE LAURA TAYLOR SWAIN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiffs/SEC: MARK DANIEL SALZBERG, ESQ.
NEAL JACOBSON, ESQ.

For DOJ: SHARON LEVIN, ESQ.

For Marcus: JULIAN FRIEDMAN, ESQ.

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1 THE COURT: Good afternoon. Please be seated. This
2 is a pretrial conference in the matter of SEC v. Amerindo
3 Investment Advisors, et al., Number 05-CV-5231.

4 For the benefit of the digital audio record this is
5 Judge Swain speaking and counsel at the tables would you
6 please state your appearances for the record. I would suggest
7 that the gentleman at the second table sit a little closer to
8 each other and have the microphone in the middle since there
9 is only one at that table. Thank you so much.

10 MR. SALZBERG: Good afternoon, Judge Swain. Mark
11 Salzberg from the SEC.

12 THE COURT: Good afternoon, Mr. Salzberg.

13 MR. SALZBERG: Good afternoon. With me is Neal
14 Jacobson from the SEC.

15 THE COURT: Good afternoon, Mr. Jacobson.

16 MS. LEVIN: And Sharon Levin from the U.S.
17 Attorney's Office. Although the Government in this capacity
18 is not a party to the case I'm here to talk about the
19 forfeiture and restitution issues.

20 THE COURT: I appreciate that. Good afternoon, Ms.
21 Levin.

22 MR. BURGER: David Burger of Robinson Brog
23 representing Mr. Vilar.

24 THE COURT: Good afternoon, Mr. Burger.

25 MR. FRIEDMAN: Good afternoon, Your Honor. Julian

1 Friedman from Stillman & Friedman. I represent two of the
2 investors who are the victims here and Your Honor has
3 previously granted me permission to participate in these
4 conferences.

5 THE COURT: Good afternoon, Mr. Friedman.

6 And on the telephone we have Mr. Tanaka?

7 MR. TANAKA: Yes, Your Honor.

8 THE COURT: Good afternoon, Mr. Tanaka.

9 Unfortunately our telephone connection is not so good so we
10 don't hear you so well. Are you able -- have you been able to
11 hear the speaking from this end well?

12 MR. TANAKA: Yes, I'm [inaudible].

13 THE COURT: That's good. So when I call on you I may
14 ask you to really try to project but just then I heard you
15 fine.

16 MR. TANAKA: [inaudible]

17 THE COURT: Great. Now, I've been kept abreast of
18 the general existence of settlement discussions in connection
19 with the restitution proceedings on the criminal case. I have
20 received recently some correspondence from Mr. Tanaka
21 concerning concerns about the management of the funds, the
22 scope of the group or groups that would be the beneficiaries
23 of any distribution of the money that's been collected. I
24 received yesterday a letter on behalf of the Mayor or Meyer
25 family M-A-Y-E-R who are apparently identified as victims with

1 respect to a large proportion of the restitution order in the
2 criminal case and that letter which I will post on the ECF
3 system if I haven't done already indicates that they are in
4 some distress and therefore even more concerned than they were
5 before about when and how disbursements will be made and from
6 Mr. Friedman and others I have received letters in the past
7 from victims and I have posted what I have received on the ECF
8 system.

9 So I would ask first for a status report and that
10 that status report include information about the criminal
11 forfeiture proceedings. I'm glad Ms. Levin is here. The
12 location of and responsibility for assets that have been
13 collected, the victim claim and identification process and
14 where the parties see that we're going from here particularly
15 in regard to realization of payouts of the money in an
16 appropriate way.

17 So, Mr. Salzberg, did you want to start?

18 MR. SALZBERG: Yes, please. Thank you. Good
19 afternoon. Just by way of a very brief background, the SEC
20 amended complaint which was filed in 2005 covered allegations
21 that were covered both in a criminal complaint which was
22 involving Catz [Ph.] and the GFRDAs as well as additional
23 investors concerning ATGF, GFRDA and Rhodes Capital. At the
24 end of the criminal action, and again this is meant to be very
25 brief, there was a \$54 million order of forfeiture, a \$34

1 million order of restitution which was \$20 million of
2 principal and the remainder is interest. And our basic
3 understanding in terms of where the composition of the assets
4 at this point, the victims in the -- that are identified in
5 the criminal action are owed approximately \$20 million of
6 restitution exclusive of interest. Additional Amerindo
7 investors have been identified approximately \$20 million --
8 the numbers have changed a little bit over time, and as we
9 understand it the current available funds at least last check
10 was approximately \$45 million of funds.

11 As we put in a couple of recent letters, this
12 potential \$54 million forfeiture order would theoretically
13 cover all existing Amerindo related investment -- assets,
14 sorry, and this summer and I assume --

15 THE COURT: I'm sorry. You said that the \$34 million
16 -- the \$54 million forfeiture order which in order of payment
17 would come behind the restitution, correct, on the criminal
18 side? Doesn't restitution get paid before forfeiture?

19 MS. LEVIN: Not exactly, Your Honor. Forfeiture --
20 they're parallel. They're both obligations. They're both
21 part of the defendant's criminal sentence but what typically
22 the Department of Justice does and what we would like to do in
23 this circumstance is any assets that we collect for forfeiture
24 there's a policy called a restoration policy where very
25 quickly we can take the money literally done with a letter

1 from me. I write to the Department of Justice. I say the
2 restitution order is complete, there are no other victims of
3 the fraud, and I ask that -- and the victims have all been
4 identified and the amounts are correct and I ask the
5 Department of Justice to take all the funds we forfeited to
6 date and the funds we're going to forfeit in the future and
7 transfer them to the clerk to be applied to the restitution
8 order and paid out by the clerk of the court to the victims.
9 That's what we do in most cases.

10 Here that is something that we'd like to do but
11 there's one little wrinkle in that -- in this case which is
12 that as you heard in the criminal prosecution there are I
13 believe it's five victims in the restitution order which also
14 includes prejudgment interest but there are other -- the fraud
15 is a little bit more extensive than what was prosecuted.
16 There was an additional -- as the SEC has alleged, there's an
17 additional related fraud that's pending before Your Honor and
18 in that case there's another \$20 million a victim, \$20 million
19 worth of claims by victim. So because we have collected more
20 money -- the restitution order now is much greater with the
21 interest and instead of going through the restoration process
22 there's another process that DOJ filed -- follows in
23 situations like this and that's called a petition for omission
24 or mitigation process. It's found in 28 CFR Part 9 and what
25 happens -- there is a victim can sue in a petition with the

1 Department of Justice with their loss, demonstrating what
2 their losses are and the Department of Justice will rule on
3 that petition and if it's granted some of the forfeited funds
4 will be transferred directly by the Department of Justice to
5 the victim to be comp -- to compensate them for loss and that
6 amount will be reduced from the restitution order.

7 Here, because of the additional victims we believe
8 that is the most appropriate mechanism to follow.

9 THE COURT: This would then be some sort of re-
10 proration of the restitution determination that was -- that's
11 part of the judgment in the criminal case?

12 MS. LEVIN: It's done somewhat separately from the
13 restitution order in the criminal case. We would rely upon
14 the restitution amounts that were determined by Judge Sullivan
15 and then we would -- but we would ask that they not -- because
16 the prejudgment interest would take away most of the money
17 that's forfeited. So we'd ask the Department of Justice
18 instead to take the restitution amounts that are listed in the
19 restitution order and then allow the other victims or
20 investors to similarly put in petitions with the Department of
21 Justice for the amount of money that they also lost and we
22 would recommend a pro rata distribution of that amount of
23 money and maybe it will actually --

24 THE COURT: A pro rata distribution of the --

25 MS. LEVIN: Forfeited funds but there may be -- it

1 may be everybody gets a hundred cents on their dollar.

2 THE COURT: Forgive me for trying to go through this
3 step by step but --

4 MS. LEVIN: I'm sorry.

5 THE COURT: You are way ahead of me.

6 MS. LEVIN: No, this is -- I know that's what I do.
7 So I know I jump around a little too quickly. So I'm happy to
8 step back.

9 THE COURT: So in Judge Sullivan's proceeding, in the
10 criminal proceeding there was a \$34 million restitution order.
11 Is that \$34 million principal only or principal plus
12 prejudgment interest?

13 MS. LEVIN: Principal plus prejudgment interest.

14 THE COURT: And then there was a larger \$54 million
15 forfeiture order?

16 MS. LEVIN: Yes.

17 THE COURT: And so when you are talking about this
18 amount to be reallocated, are you talking about reallocation
19 of the differential between 34 and 54 or the entire 54?

20 MS. LEVIN: The entire 54 is what's forfeited though
21 while the judgment is for \$54 million the Government has not
22 seized or restrained \$54 million. The value of the assets,
23 many of them in securities. The value of them fluctuate. At
24 last count I think we had -- I think it was a little bit less
25 actually than -- it was about \$43 million but the amount --

1 that amount can go up or could go down but it's probably
2 between, right now probably between \$40 and \$45 million in
3 assets. That's the pool at present that would be available
4 for remission to victims.

5 THE COURT: And you would have a process for seeking
6 modification of the judgment entered by Judge Sullivan insofar
7 as that judgment identified particular victims and restitution
8 amounts? Wouldn't that be required?

9 MS. LEVIN: No, it's completely separate. When money
10 is forfeited it becomes property of the United States and
11 under the forfeiture statute which is 28 U.S.C. Section 853,
12 the Attorney General has a discretion to do certain things
13 with forfeited property, and one of the things that the
14 Attorney General has authority to do is he has the authority
15 to remit it or to restore it to crime victims. So this is a
16 Department of Justice procedure independent of Judge
17 Sullivan's decisions on restitution or forfeiture though of
18 course guided by Judge Sullivan's determination on the amounts
19 of restitution for the victim and -- because we would rely
20 upon that information in crafting what the restitution order -
21 - what the remission amounts would be at least with respect to
22 those victims but it's an independent procedure where each
23 victim either on their own or through counsel would be able to
24 file a statement or a claim with the Department of Justice
25 laying out what their loss amount is and then someone at the

1 Department of Justice his job is to go through them and figure
2 out granted, not granted and how much they're going to get.
3 They put them all together and then the money is distributed
4 and my office has an opportunity to comment on it and they
5 will entertain -- it's a very, you know, somewhat open process
6 in terms of people can submit whatever documentation they
7 want.

8 We go -- my office takes on the task of noticing the
9 victims and we will notice -- we have from the SEC a list of
10 investors. We will go off of that list. Mr. Tanaka in a
11 previous conversation indicated that he thinks that we may not
12 have all the names of the investors and we're of course open
13 to receiving any other additional investor information and
14 we'll notice them as well.

15 THE COURT: Have you -- since Mr. Tanaka clearly is
16 not the custodian of the records of the entities at this point
17 given his physical location, have you and he talked about some
18 methodology for identifying the additional people?

19 MS. LEVIN: We have not but I believe my office has
20 most of the records because I believe there were search
21 warrants done. So we have the records from the companies and
22 it's from that that we obtain the list so -- but we may be
23 because there's foreign investors -- it may not be complete.
24 So we're very comfortable with providing it to Mr. Tanaka if
25 he knows of additional people we've left off. I believe we

1 did so already. We definitely provided to counsel and yes,
2 and Mr. Tanaka was included in that through his sister.

3 THE COURT: And is the Department of Justice now
4 actually the manager or custodian -- well, are the funds
5 custodied under the supervision of the Department of Justice
6 now?

7 MS. LEVIN: Not yet, Your Honor. What happened here
8 was that we obtained a substitute asset order. The court --
9 Judge Sullivan issued a money judgment for \$54 million and
10 additional assets that we've had restrained and we asked Judge
11 Sullivan -- we applied an application to get a substitute
12 asset order to order them forfeited. Judge Sullivan entered
13 that forfeiture order forfeiting the defendant's interest in
14 the property but that left open the issue of third parties.
15 So third parties had an opportunity to file a petition and
16 that period has expired and we're prepared to go in and submit
17 a final order of forfeiture and when we get that final order
18 of forfeiture when Judge Sullivan issues it, the United States
19 will have title to the property, will take possession of the
20 property and will be, you know, have the authority to
21 liquidate it or to do what is appropriate with respect to
22 that.

23 But in light of -- we've been -- in ongoing
24 negotiations with counsel for several months now, I believe
25 from our last court conference, we've refrained from Mr.

1 Vilar's attorney in the criminal case held in opposition to
2 the forfeiture order and we were hoping to come to some
3 agreement before we went ahead and did it and it doesn't
4 appear right now that we're going to be able to reach an
5 agreement on this matter. So what we had hoped to do was go
6 forward on Monday, file our application for our forfeiture
7 order which Mr. Hurlock [Ph.] has already opposed. We have
8 our legal authority for it. Judge Sullivan will rule on it
9 and the sooner he grants the forfeiture order we think that
10 it's in the best interest to begin the petition process.

11 The only wrinkle in that is that because Mr. Vilar
12 and Mr. Tanaka have both appealed their conviction the
13 Department of Justice doesn't traditionally distribute
14 remission until the appeals are final because in the event
15 that the conviction is reversed or the forfeiture is reversed
16 on appeal the defendants would get their money for property
17 back and they typically won't distribute money until the
18 appeal has been upheld -- I mean the forfeiture has been
19 upheld.

20 What our agreement was, what we were trying to reach
21 a compromise in is that Mr. Vilar and Mr. Tanaka would at
22 least agree to some subset of money that could be distributed
23 now and that they would -- the only thing we asked for was a
24 waiver that in the event that their conviction is reversed on
25 appeal they won't seek this money that went back to their

1 investors, they won't seek it back. That's where things just
2 have not worked out and I fear that -- it's a lengthy process
3 to go through the petitoin process just because of the
4 notification, giving people time to file a petition. I'm very
5 conscious of as you know Mayer's financial situation. So I
6 feel like we can't wait any longer. We need to move this
7 process along as quickly as possible.

8 I'm going to do everything in my power as the chief
9 of the forfeiture unit here to make sure that this is a number
10 one priority and that we get a decision, and at the same time
11 I'm very happy to continue to negotiate with Mr. Vilar's
12 counsel and Mr. Tanaka's counsel in the criminal case to see
13 if we can come up with some compromise but I think we need to
14 move forward on this.

15 THE COURT: I'm glad to hear you say that it is a
16 priority for your department. I also hear you saying that the
17 department is reluctant to make distributions before the
18 conclusion of an appeal without certain voluntary waivers and
19 that the process takes a long time.

20 So assuming that you're successful even before Judge
21 Sullivan in respect of the objections that have been raised by
22 Mr. Vilar and a forfeiture order is issued there, what can
23 victims or claimants expect in terms of the practical effect
24 of it being a high priority and what is within your power in
25 terms --

1 MS. LEVIN: What is the --

2 THE COURT: -- of them seeing actual dollars?

3 MS. LEVIN: I actually called Washington before I
4 came here because I knew that Your Honor would want to know
5 these things of course. I talked to them and asked them to
6 push it up to the front of the pile but generally once we get
7 the order we will immediately send out letters to every single
8 investor that we know of and we have to give them a reasonable
9 time to put in petitions. So assuming 30 days is a reasonable
10 period, and I guess we could extend it for some people if
11 possible, they have 30 days to figure -- a week to get out the
12 notice letters, give them a week for mailing then 30 days. So
13 figure that's six weeks. Then we have to gather them -- my
14 office has to gather them and review them and make a
15 recommendation as does the postal inspection service. As I
16 said, they -- as soon as they come in and we're ready I'll sit
17 down with whoever I have to and we'll review them. Depending
18 on the volume of them it may take a couple of days but I
19 assume -- let's assume we can do it within a week and then we
20 will submit our recommendation to the Department of Justice
21 and then I'll call them. So I would say -- I don't know that
22 it's ever been done this quickly but we would try and do it
23 within three or four months.

24 THE COURT: And that's notwithstanding the pendency
25 of the appeal --

1 MS. LEVIN: No, it has nothing --

2 THE COURT: -- in the criminal case?

3 MS. LEVIN: -- to do with the appeal. They will
4 rule at that point and then we'll grabble with the issue of
5 can they distribute the money, can they grant some kind of
6 extraordinary waiver in this circumstance. I don't know that
7 they will but I am perfectly happy to raise it up as far as I
8 can in Washington.

9 THE COURT: So the three to four month time frame is
10 to what, to sign off by the Department of Justice on how the
11 money will be distributed when it's distributed --

12 MS. LEVIN: Yes.

13 THE COURT: -- or it's three to four months to the
14 Mayers actually having some help in paying their rent?

15 MS. LEVIN: The distribution of it should be
16 relatively quick or at least we could possibly start with
17 partial distributions because there's securities and there's a
18 question of are they going to be liquidated but there is a
19 bulk of cash that's there.

20 The procedure actually is relatively -- like the
21 restoration process that I told you where the marshals give
22 the clerk's office a check and the clerk's office has to write
23 checks, this is typically the Marshal Service either wire
24 transfers or cuts their own checks right away. So it's an
25 internal process within the United States Marshal Service. So

1 it doesn't -- it shouldn't take that long. It will take a
2 couple of weeks in terms of calculating it out and all of that
3 and being prepared to distribute the checks but it shouldn't
4 be -- it shouldn't be more than I would say like two weeks for
5 them to be able to do it.

6 THE COURT: So this isn't something held up by the
7 pendency of the appeal?

8 MS. LEVIN: It will not --

9 THE COURT: Forgive me for asking you that same
10 question four times.

11 MS. LEVIN: It won't be held up during the pendency
12 of the appeal unless the -- Mr. Vilar and Mr. Tanaka move for
13 a stay of the entry of the forfeiture order in which case if
14 they move for a stay then we can't do anything. We can't move
15 forward.

16 THE COURT: If the motion is granted.

17 MS. LEVIN: If the motion is granted, yes, if the
18 court grants the stay.

19 THE COURT: Now, who is managing this money? Is it
20 invested somewhere?

21 MS. LEVIN: Yes. There are accounts at JPMorgan.
22 They're the same amounts that Amerindo had in the first place.
23 They're just remaining exactly where they were.

24 THE COURT: But they're not business checking
25 accounts. They're some sort of investment accounts?

1 MS. LEVIN: They're both. They're both.

2 THE COURT: So there is some money that is not
3 earning any interest at all, not that --

4 MS. LEVIN: I don't think they're business checking
5 accounts. I think they're all interest bearing accounts as
6 best as my recollection -- I'm not sure we know completely all
7 the details of it but I cannot imagine that they're checking
8 accounts, no.

9 THE COURT: That is something that I would hope and
10 expect the department is focusing on given that it is a lot of
11 money and we're in a very low interest rate environment.

12 MS. LEVIN: Your Honor, we don't have authority right
13 now until we have that final order of forfeiture. We don't
14 have authority to take possession of those assets. So we're
15 sort of in limbo right now but once the money -- once we do
16 take possession of them and they're put in the Marshal's
17 account they do earn interest in the Marshal's account.

18 THE COURT: Now, Mr. Tanaka in his letter raised a
19 couple of additional points that I wanted to ask you to
20 address directly. One is his queries as to the status of the
21 pension -- he said there are separate pension related accounts
22 of the company and I think he used a figure of something like
23 \$10 million in that regard and he also contended that there
24 are investors in the company who were not victims of any of
25 the alleged fraudulent activities and his assertion is that

1 the money shouldn't only go to the victims of the -- we'll say
2 alleged fraudulent activities just to cover this case which is
3 unresolved and the criminal case.

4 So is the \$54 million figure representative of money
5 that the Government has been able to trace to and map to its
6 allegations that Messrs. Vilar and Tanaka took investor money
7 illegitimately and put it somewhere else or is that all of the
8 assets that can be found that are attributable to all of these
9 entities whether they were in a money market book kept to
10 particular individuals and the pension account and office
11 assets account or what?

12 MS. LEVIN: It's a little bit -- with respect to Mr.
13 Tanaka's first question, I don't have an answer. I can go
14 back and try to find it. I tried to get a quick answer on it
15 and I couldn't get one but we're absolutely going to look into
16 it and when the Marshals take possession of all the accounts
17 we'll make sure that we find out exactly what's there.

18 With respect to the second question, that's the
19 whole point of the remission process versus doing that earlier
20 process. I talked about restoration where it would just go to
21 the victims in the criminal case. If we want to make sure
22 what Mr. Tanaka is saying is investors, the people that are
23 investors that are considered -- that are the ones that are
24 part of the SEC case, the point of our going through the
25 remission process rather than the restoration is to recognize

1 them as well so that they can also share in the distribution.

2 So that's where we are. We want to make it inclusive.

3 In terms of the \$54 million I know I'm making
4 forfeiture loss to them unbelievably confusing but the \$54
5 million is actually something else. That's the property that
6 the defendants obtained as a result of their offense. Without
7 respect to what they have that's a money judgment against them
8 because that's assets that they got and it was a gross -- it's
9 the gross proceeds of their offense without any subtraction
10 for money that -- for any of their costs of engaging in the
11 criminal activity. So it's somewhat of a separate number.

12 THE COURT: These were not -- well, I guess one thing
13 I'm trying to get at is -- two things I'm trying to get at.
14 Is that number predicated on assets and substitute assets
15 titled to the individual and/or entity defendants? That's
16 sort of Part A of the question. And Part B of the question is
17 were there any segregated accounts here? Were there accounts
18 or assets that were identifiable to particular investments by
19 people who are not alleged to have been defrauded here and if
20 so, how is that being handled?

21 MS. LEVIN: There is one other account. Well, in
22 terms of the \$54 million, it's not tied to any particular
23 assets. The \$54 million is the money -- is essentially the
24 money, the gross money that the defendants got, the money that
25 they got as a result of the fraud. But some of it may come

1 from some of the investors, not the victims.

2 In terms of are there others outside of it, the
3 group that is in the criminal case are a certain class of
4 victims. The accounts that we have are -- we call them
5 substitute assets but the reality is there was so much
6 commingling of the money here that it's very, very hard for
7 the Government -- it was going to be an exhaustive task to
8 literally to trace the crime proceeds that were in those
9 accounts with money from things that were not charged as a
10 crime. So we just call them substitute ,assets other assets
11 of Amerindo or Mr. Vilar or Mr. Tanaka that can be used to
12 satisfy the money judgment but there were other investors.
13 There was ATGF. There were other funds that they had that are
14 not necessarily -- that were not a part of the criminal case
15 and there was one other account that is subject to a
16 liquidation proceeding in the Cayman Islands and we vacated
17 the forfeiture order with respect to that account because the
18 court in the -- it was a bankruptcy proceeding in Grand Cayman
19 Islands and the court in that case had appointed a liquidator.
20 He had the bankruptcy -- they have the bankruptcy order
21 entered in this court and so we released that property from
22 the restraining order and that property was distributed
23 pursuant to a bankruptcy court in the Grand Cayman Islands
24 reorganization plan and that process was ongoing right now.

25 MR. SALZBERG: Your Honor, if I may. That actually

1 is one of the entities that Mr. Tanaka was asking about in his
2 letter. That's the Amerindo internet fund which is the \$10
3 million Cayman Island fund I believe.

4 MS. LEVIN: And that property is being distributed in
5 a separate proceeding that we have no part of.

6 THE COURT: Will the calculations, the distribution
7 principals, the ultimate recipients through the Department of
8 Justice process be revealed and sort of when in relation to a
9 final decision? There's been concern expressed about
10 [inaudible], about fairness of treatment of fraud victims as
11 opposed to regular investors, all sorts of different angles on
12 these issues as raised by different parties in interest.

13 MS. LEVIN: It's solely in the discretion of the
14 Department of Justice because it's forfeited funds. However,
15 that being said, there is a -- there's a federal regulation
16 which governs it which makes things pretty clear. It's a
17 victim of the offense or a related offense and we would
18 consider the case before Your Honor to be at a minimum a
19 related offense. There is no priority given for distribution
20 to victims of the offense over the related offense. Generally
21 the Department of Justice follows principals that the victims
22 can recover the pecuniary loss that they suffered as a result
23 of the criminal conduct and there typically is not any
24 interest given on it and those are sort of the basic
25 principles and they favor the concept of it. There's not

1 enough money for everybody to be made whole. Pro rata
2 distribution based upon the amount of your loss.

3 That being said, each petition -- it's not a closed
4 process where you write something and there's no input. If
5 you want to -- the Department of Justice for each individual
6 investor, they will get a letter from the Department of
7 Justice telling them what the determination is. They
8 typically will tell me before and if there's -- we think that
9 there's issues or they need additional information the
10 individual investor or victim or their counsel can meet or
11 talk on the phone with people from the Department of Justice.
12 It's an informal process. The whole basis for it is to
13 achieve justice, provide compensation. If there's a limited
14 pot of money you always run into situations where -- and I'm
15 very cognizant of Mr. Vagos' letter on behalf of the Mayers
16 that the victims of the charged offense -- of the offense in
17 the criminal case feel like they want to make sure that
18 they're able to get all their money, that they should be the
19 ones that recover first and while I'm sympathetic to that
20 argument the general rules for remission are all victims are
21 treated equally.

22 But in the end it's a decision made by the
23 Department of Justice and can be reviewed of the chain there.

24 THE COURT: And by virtue of the forfeiture order
25 that you anticipate will be entered by Judge Sullivan via the

1 criminal proceeding these identified assets which are less in
2 total amount than the forfeiture judgment by virtue of the
3 forfeiture judgment all of these identified assets are
4 considered proceeds of the crime, they're forfeitable, and
5 they are put into this Department of Justice process that
6 you've described?

7 MS. LEVIN: Yes, Your Honor.

8 THE COURT: And that that process has, if you will,
9 first claim on the assets and by law that is what the
10 distribution process will be?

11 MS. LEVIN: Yes, Your Honor.

12 I also want to add one other thing about this
13 process which is somewhat beneficial is unlike situations
14 where a receiver is appointed by the court there are very
15 little expenses involved in that process. So that the hours
16 spent reviewing the petitions or the job of liquidating the
17 assets, liquidation of the assets is done by the Marshal
18 Service. The job of reviewing the petitions is me and I'm
19 paid my Government salary as well as people at the Department
20 of Justice. So it's a pretty low cost process which will --
21 so there will be less money reduced from the money that the
22 victims are going to recover.

23 THE COURT: Thank you for that --

24 MS. LEVIN: Thank you.

25 THE COURT: -- very extensive explanation and for

1 engaging my questions and bringing me up to speed on it.

2 So at this point what is it that the SEC would
3 propose we do in this proceeding?

4 MR. JACOBSON: Your Honor, I'll try to answer that.
5 Neal Jacobson. One of the issues we have here is that we
6 don't have an assets before Your Honor. So --

7 THE COURT: And it sounds like we won't given the
8 effect of the forfeiture order.

9 MR. JACOBSON: At this point it appears that we
10 won't, correct. It's possible if the forfeiture is reversed
11 and the money hasn't gone out there will be some assets that
12 would no longer be subject to the criminal jurisdiction in
13 which case there would be assets out there.

14 The question is then at some point, and I think we
15 stated this in one of the letters a month or two ago, I'm not
16 sure exactly when, at a minimum in our case we still have
17 defendants and I believe many haven't answered. Is that
18 correct? So the case has been stayed and nothing has happened
19 since the stay was lifted.

20 One avenue we considered was whether or not we
21 should move forward with a summary judgment motion of some
22 type against all of the defendants seeking disgorgement or
23 other type of equitable relief in order to make sure we have a
24 judgment against the defendants in the event the forfeiture
25 order is eventually -- if it's reversed or modified on appeal

1 in that case. So there would be some mechanism at that point
2 for us to make a claim on the assets that are now subject or
3 will be subject to the Department of Justice's jurisdiction.

4 Given the fact that this could take a long time -- I
5 believe the appeal may take into next year or later, I'm not
6 sure if that's the best use of the resources of the court at
7 this point but at some point we will have to resolve the
8 issues with respect to the outstanding defendants whether it's
9 injunctions or default judgments or the like because the case
10 is still open with respect to those defendants who pled. I
11 think at this point it might be -- we're still giving it an
12 additional few months or so to see how the process goes with
13 the Department of Justice and whether we can continue to speak
14 with the defendants to try to reach some type of mutual
15 consensual resolution to the matters that won't require
16 litigation.

17 So I think a few more months at the very least to
18 continue to speak to the defendants and for the process to
19 unfold might be beneficial.

20 THE COURT: So you'd suggest another control date in
21 say six months, another conference date?

22 MR. JACOBSON: I think six months is probably a good
23 amount of time, Your Honor.

24 THE COURT: Thank you. Did anyone else wish to be
25 heard? I see Mr. Burger is standing.

1 MR. BURGER: Yes, may I address the court, Your
2 Honor?

3 THE COURT: Yes, sir.

4 MR. BURGER: We've heard that what is requested is
5 that the money be forfeited so it becomes the property of the
6 United States and that the Department of Justice would then
7 have discretion as to what to do with those funds. Now, with
8 the appeal pending we have absolutely no objection to invested
9 funds being returned to the investors directly. Not becoming
10 property of the United States, not being forfeited, not being
11 spent at the Government's discretion. That is what we've
12 opposed.

13 In the past we -- Mr. Vilar signed a stipulation
14 releasing \$150,000.00 to the Mayers because of their
15 difficulties financially and we have no objection to doing
16 something similar though we're not willing to forfeit all the
17 money to the United States Government in their discretion
18 while the appeal is pending.

19 THE COURT: Ms. Levin, did you want to speak to that?
20 You're clearly -- the forfeiture proceeding is cued up before
21 Judge Sullivan and so to the extent there is an objection to
22 the grant of that relief that objection has to be directed to
23 Judge Sullivan because it's not in the proceeding before me
24 but I think I hear in your statement a statement of position
25 but also a statement in the theories of discussions I guess

1 that have been going on between the department and the
2 defendants here.

3 MR. BURGER: Which has some bearing on the comments
4 that have been made here today.

5 THE COURT: Yes.

6 MS. LEVIN: Your Honor, with respect to the first
7 statement about the Mayers, and I will certainly be in touch
8 with the Mayers counsel, Mr. Vagos, and see if there is some
9 money in light of their dire circumstances right now, if
10 there's some money that can be released to them. We would
11 have to because there's a forfeiture order forfeiting the
12 defendants' interest in the property, we would have to amend
13 the forfeiture order to do so but I think for some small
14 amount of money we can potentially agree to that but like --
15 and particularly because they're one of the largest victim
16 investors but to the extent that releasing some people's money
17 and others is going to harm the greater group we would -- we
18 couldn't agree to it.

19 With respect --

20 THE COURT: Well, given the magnitude of the
21 calculation as to them so far it would just seem to me that
22 some amount that would relate to their immediate needs
23 wouldn't upset the apple cart.

24 MS. LEVIN: No, absolutely. I think that's
25 fantastic. This is the first I heard of it today. I think

1 it's a fantastic idea and we will literally jump right on that
2 right away.

3 With respect to the rest of the money, we have -- we
4 forfeited the defendants' interest in the property to vacate
5 the forfeiture order and allowed -- there's really no
6 procedure to be followed to be returning the money. I don't
7 think that it's appropriate for Mr. Vilar or Mr. Tanaka or
8 their counsel to be the ones to decide who gets what money.
9 Mr. Vilar and Mr. Tanaka are both incarcerated right now. So
10 practically speaking it's not [inaudible] business entity
11 could do it. Rather, we have to have some unusual procedure
12 like the -- Judge Sullivan would have to vacate the forfeiture
13 order and appoint an independent monitor or receiver to take
14 possession of all of the funds and to send out claims, to
15 liquidate the assets and to determine the distributions. That
16 would all come out of the money that the victims are going to
17 recover and they would be -- since it's money -- I'm not even
18 sure who would be the one that would review this independent
19 monitor's determination of who gets what and in the case
20 before Judge Sullivan the investors aren't a party to that
21 case. They're not victims and they're not recognized in the
22 restitution order.

23 So we have a very unusual circumstance where we
24 would essentially be asking Judge Sullivan to vacate the order
25 of forfeiture, the order of forfeiture for the substitute

1 assets that he's already entered to be -- to allow the money
2 to go to essentially non parties to the criminal proceeding as
3 well as the victim and I do not believe that the victims in
4 the criminal case are going to agree to that because they will
5 be concerned that their amount could be diluted plus the fact
6 that there is a Department of Justice procedure which will
7 cost them the -- to be a very small expense whereas the cost
8 of hiring an independent monitor wouldn't be one individual.
9 It would probably have to be some kind of firm that does these
10 type of claims processing and from my experience in forfeiture
11 cases they can be expensive. We could be spending several
12 million dollars on the processing and I don't know that it --
13 that it would be appropriate to do under the circumstance
14 because there's no reason to believe -- I know I'm saying
15 trust the Government but I've explained what the principal is
16 which I think everybody agrees. The Department of Justice
17 will essentially rely upon --

18 MR. TANAKA: [Inaudible] Ms. Levin [inaudible].

19 MS. LEVIN: I'm sorry, Mr. Tanaka. Yes, I'll move it
20 over here. Can you hear me better now?

21 MR. TANAKA: Yes, [inaudible].

22 MS. LEVIN: I'm sorry. What I was essentially
23 saying -- let me just quickly review what I was saying to you
24 which is that there will be an expense -- I think the only way
25 to do what Mr. Vilar's counsel has suggested would be to bring

1 in some kind of -- this is an unusual procedure that I'm not
2 even sure that could be done.

3 THE COURT: May I just interrupt for one moment?
4 This is Judge Swain. Your remarks of the last five minutes or
5 so, Ms. Levin, I heard as a summary of how you would
6 anticipate you would respond before Judge Sullivan --

7 MS. LEVIN: Yes.

8 THE COURT: -- to the argument that Mr. Vilar's
9 counsel has made.

10 MS. LEVIN: Well, actually my argument that I would
11 respond -- I'm sort of giving an equitable argument. In terms
12 of the actual legal argument the court has -- the entry -- the
13 filing of an appeal does not divest the court of jurisdiction.
14 If Mr. Vilar or Mr. Tanaka does not want the forfeiture to be
15 implemented their remedy is to file a motion for a stay of the
16 forfeiture order which they're free to do under the forfeiture
17 law. Whether Judge Sullivan will grant the stay, it's within
18 his discretion but just in terms of a fairness of how can we
19 get the money back to these two -- to the investors --

20 THE COURT: And also explaining why in your view it
21 wouldn't make sense to try to do it any other way.

22 MS. LEVIN: I think the simplest, the quickest and
23 the most practical way to get the money back to the investors
24 would be through the petition for omission process. There's
25 no requirement that the defendants agree that the forfeiture

1 was proper, agree that the restitution is proper, and I've
2 made the representation that the victim and the investors, the
3 investors that sit under the regulation as a victim -- I know
4 that the regulation is what qualifies as a victim, that both
5 of those groups, which is essentially investors and the
6 various Amerindo funds, that they will recover equally on a
7 pro rata basis under the petition for omission process based
8 upon their providing appropriate documentation to show what
9 their losses are.

10 THE COURT: Thank you. Mr. --

11 MR. TANAKA: [Inaudible] we know that [inaudible]
12 challenging forfeiture [inaudible] we know that [inaudible]
13 money through [inaudible]. So again is there any objection
14 [inaudible] that process because otherwise we're going to be
15 hung up legally [inaudible] money [inaudible].

16 MS. LEVIN: The difference is that for an agreed upon
17 amount to the Mayers is just simply -- it's a small
18 distribution. The decision of multiple different investors
19 victims, there's a large group and someone needs to decide who
20 gets what and what the amount is, and that's something that an
21 outside third party has to do. That's not something that
22 can -- we can agree by stipulation this is the amount that
23 everybody's going to get and we're going to release it. It's
24 a process that has to be gone through and as you yourself
25 recognize there's numerous different investors that would have

1 a right to submit their papers.

2 But in terms of the issue on appeal, this has no --
3 this distribution has no impact on that whatsoever and the
4 proposal that I had made most recently was that we just carve
5 out a set amount, \$17 million, and we agree this amount be
6 distributed by the Department of Justice under the remission
7 process with an agreed upon criteria. Amount and restitution
8 orders for victims, amount in last statement for investors,
9 and that that money -- of that \$17 million it would be
10 distributed pro rata. That's the quickest, that's the
11 fastest, that could be by stipulation. All the Government
12 asks for in return -- and I spoke about this with the
13 officials at the Department of Justice in Washington who have
14 not seen the stipulation yet because we didn't have one but
15 they agreed in principal. So I imagine this is something that
16 we could get to happen and the only requirement for Mr. Vilar
17 and Mr. Tanaka -- and for me, Mr. Tanaka, is that you agree
18 that in the event that your forfeiture is reversed on appeal
19 that you will not seek to recover this \$17 million from the
20 United States. The remaining money will be there waiting the
21 decision of the Court of Appeals on the forfeiture.

22 THE COURT: So to the extent Mr. Tanaka is amenable
23 to continuing a discussion of the possibility of that
24 structure with you, what is your -- the mode of communication
25 he should use? Because obviously we can't spend the afternoon

1 having a settlement discussion here.

2 MS. LEVIN: Yes, of course. We'll just talk on the
3 phone.

4 He can -- through email, don't you think?

5 MR. SALZBERG: Your Honor, it's Mark Salzberg. I've
6 been communicating with Mr. Tanaka via email through his
7 sister. Mr. Tanaka is also represented in the criminal action
8 and to the extent that there have been discussions it's
9 largely been obviously the staff and the U.S. Attorney's
10 Office and counsel in the criminal matter for both Mr. Vilar
11 and Mr. Tanaka. So he has been represented in the
12 conversations. To the extent that he wants to become more
13 involved in the conversations I think it would probably make
14 sense for him to have a conversation with his criminal --
15 counsel in the criminal matter.

16 MS. LEVIN: Your Honor, there's a little bit of a
17 disconnect here because Mr. Vilar and Mr. Tanaka have separate
18 counsel in the criminal case who are not here today.

19 THE COURT: Yes. I thought that some criminal
20 counsel were supposed to appear today and that's why we had
21 adjourned this.

22 MS. LEVIN: Yes, that was my understanding as well,
23 Your Honor, because I think it would have been very helpful if
24 we had everybody in the same place.

25 THE COURT: Yes.

1 MS. LEVIN: The problem is we had these discussions,
2 we think we're in agreement and then we go back and we talk to
3 the criminal counsel and they disagree. So I think that
4 ultimately Mr. Tanaka should talk to his counsel and he can
5 call me and we can try and work through this.

6 THE COURT: Now, Mr. Friedman had stood up. Before
7 Mr. Friedman speaks I would just like to try to summarize my
8 understanding of the broad contours of the proposal as I heard
9 them.

10 So the proposal that the department has made is for
11 \$17 million of the identified funds to be distributed among
12 investors including the victims identified in the criminal
13 case as a one time final no clawback distribution to these
14 people and even in the event that there is a reversal of the
15 convictions or of the forfeiture order Messrs. Tanaka and
16 Vilar would be asked as part of this arrangement to get the
17 \$17 million out to the investors to agree and waive
18 permanently any claim that any of that money should get back
19 to them or go anywhere other than the investors to whom it had
20 been distributed. Is that a simple summary?

21 MS. LEVIN: Yes, exactly, Your Honor.

22 MR. BURGER: Your Honor --

23 THE COURT: First -- I'm sorry. Let me hear Mr.
24 Burger and then Mr. Friedman.

25 MR. BURGER: We have no, as I think I said before, no

1 principal objection to the return of invested funds
2 established to be owed to investors and if initially there
3 were a distribution of \$17 million in that regard we could
4 cooperate with that and agree to that but I do not understand
5 why that cannot be done outside of the forfeiture order unless
6 I've misunderstood, and I'm not as familiar with all the
7 details here as the other counsel here today.

8 THE COURT: Let me just ask. Ms. Levin, to do this
9 you would have to get the forfeiture order reduced by the \$17
10 million or something to carve it out of that process, is
11 that --

12 MS. LEVIN: We would apply any money returned to the
13 victims and investors. We would apply that \$17 million
14 against the forfeiture order and we would reduce it. We don't
15 have to ask the court to do it. I'm the one that credits
16 forfeiture orders. I would credit that.

17 THE COURT: So that would count against anything
18 under the forfeiture order if the forfeiture order later went
19 away but everybody had made these waivers it would be kind of
20 no harm no foul, the money would stay with the -- return to
21 the investors?

22 MS. LEVIN: Exactly.

23 THE COURT: For me that helps in clarification. I
24 don't know if that goes to the point that, Mr. Burger, you
25 were trying to raise.

1 MR. BURGER: Well, we aren't agreeing to forfeiture
2 order as applied to these funds. My understanding is as of
3 the moment the forfeiture order does not apply to the funds
4 that we're talking about. That would require further
5 application. Is that correct?

6 MS. LEVIN: The defendants' interest in the funds
7 have been forfeited. For the United States it's a two part
8 process but the second part has nothing to do with the
9 defendants. The first part is the initial preliminary order
10 of forfeiture forfeits the defendants' interest in the
11 property.

12 THE COURT: And that has already been entered?

13 MS. LEVIN: That has already been entered. The
14 second one is notice sent to third parties that could
15 potentially have an interest in the property and here notice
16 was sent out and published on the internet and there were
17 actually a couple of claims filed by investors. I spoke to
18 them, explained the process to them and also legal they
19 don't -- because there weren't investor accounts with certain
20 investor's names on it, they don't have an interest in the
21 specific property. Explained the process. They withdrew
22 their claims so money could be distributed under the
23 Department of Justice's petition for omission or mitigation
24 process, and there actually are I believe three or four
25 withdrawals of claims that specifically state that on the

1 record in the criminal case.

2 But the second part is an order for the United
3 States to get formal legal title to the money. Then we need
4 to get that final order of forfeiture. It's essential --

5 THE COURT: So let me just try to cut through this a
6 little bit because the hour is getting a little bit late in
7 relation to some other things.

8 For this settlement proposal, if you will, as to the
9 \$17 million, you're not asking Mr. Vilar and Mr. Tanaka to
10 withdraw any objection that they have to the forfeiture orders
11 or withdraw anything on appeal as to the forfeiture order
12 that's been entered as to their assets? You're not asking
13 them to consent or agree to the propriety of a Department of
14 Justice administered forfeiture proceeding. What you're
15 proposing is that there be a contractual agreement under which
16 the \$17 million would be distributed to specified investors in
17 specified amounts that part of that contractual agreement
18 would be that that particular distribution would be final as
19 to Messrs. Tanaka and Vilar and no matter what happens in the
20 forfeiture later, whatever happens in the criminal case they
21 wouldn't try to claim any of that money back and say well,
22 those people weren't really victims and so now the Government
23 should pay me back the \$17 million; it has to be an agreement
24 that lets that \$17 million stay with those people no matter
25 what but you don't intend for this to operate in any way that

1 would prejudice the positions that they're taking regarding
2 the forfeiture proceedings, the forfeiture order that's
3 already been entered or the criminal convictions. Is that
4 correct?

5 MS. LEVIN: Yes, exactly, Your Honor. I just want to
6 have one clarification. When you were describing it I think
7 you were just being descriptive but it raised another issue
8 which is an objection that Mr. Vilar's counsel has had.
9 They've also asked before they consider this aside from not
10 wanting the property to be forfeited, which is just impossible
11 for DOJ to do anything without being forfeited, would be that
12 they'd be able to review the distribution before they agree to
13 it and the Department of Justice without an order of
14 forfeiture is not going to agree to -- they're not going to
15 begin the petition process and they're not -- they're not
16 going to give the defendant of the criminal case an
17 opportunity to review the amount of money that they're going
18 to be distributing to the particular victims.

19 THE COURT: Would that apply to the \$17 million as
20 well?

21 MS. LEVIN: Yes, that would apply to the -- the \$17
22 million. The agreement that I drafted provides this criteria
23 which is that the victims in the criminal case get the amount
24 in the restitution order without interest and all other
25 qualified investors get the amount in their last statement.

1 So the exact -- who exactly applies for a petition and the
2 amount in their last statement is not something that we know
3 right now but we just simply want them to agree to the
4 principal of it. We don't want to be in a position where the
5 Department of Justice is making a presentation after doing all
6 of this, makes a presentation to Mr. Vilar and Tanaka and they
7 say we don't agree, we're not agreeing to distribute the
8 money.

9 THE COURT: Thank you. Mr. --

10 MR. TANAKA: I mean we want [inaudible]. We're
11 looking [inaudible] we're looking to distribute about \$40
12 million. We're [inaudible] we're just saying that [inaudible]
13 distribute \$17 million in the same way we distributed
14 \$175,000.00 to the Mayers. What's the [inaudible].

15 MS. LEVIN: The reason --

16 THE COURT: I think that Ms. Levin has explained that
17 in a couple of different ways and sufficiently for this
18 proceeding. I think additional conversations need to go on
19 off line directly between the parties and their
20 representatives to see whether this \$17 million piece can be
21 done and what if any differences there are between the earlier
22 process and this but I think that we have identified the fact
23 that there is this proposal on the table, there's this
24 potential on the table and obviously it needs more work --
25 more communications and more input all around.

1 Mr. Burger, are you done? Can we say that you're
2 done for this point?

3 MR. BURGER: Yes, I mean the basic concept of
4 agreeing to the distribution of \$17 million, there's no
5 dispute as to that. It's how it's done and what the effect is
6 of how it's done and we're happy to talk about that.

7 THE COURT: Thank you. Mr. Friedman.

8 MR. FRIEDMAN: Your Honor, I would just like to
9 address the subject of the \$17 million. I think there is no
10 basis for limiting the distribution to \$17 million. It gives
11 Mr. Vilar and Mr. Tanaka leverage that they should not have.
12 I think Ms. Levin is being generous in trying to make an
13 accommodation with defense counsel but I think defense counsel
14 has no right and no right to participate in this process and
15 the -- originally I was going to argue to Your Honor that they
16 never had any interest in the assets belonging to Amerindo,
17 that neither Mr. Vilar nor Mr. Tanaka never had any such
18 interest because they were simply paid managers of those funds
19 and the fact that in his forfeiture order Justice Sull --
20 Judge Sullivan referred to their interest in Amerindo and what
21 he was forfeiting was their interest in ATGF. That did not
22 mean they had an interest.

23 But my argument was made much easier this week
24 because the defendants filed their Second Circuit briefs and
25 in their Second Circuit briefs, their criminal appeal

1 briefs -- and I'm reading from Mr. Vilar's criminal appeal
2 brief, he specifically says I have no interest in the ATGF
3 assets. When I say ATGF assets I am referring to the same
4 assets now in possession of JPMorgan Chase that Ms. Levin
5 referred to a minute ago and that people have said are worth
6 \$40 to \$42 to \$45 million.

7 In his brief Mr. Vilar says "The defendants held the
8 capital as fiduciaries in constructive trust for the
9 investors." The defendants are Mr. Vilar and Mr. Tanaka. The
10 investors are the non criminal victim participants in the
11 remission process that Ms. Levin has described to Your Honor.
12 The defendants -- and I think this is a judicial admission
13 that's binding on the defendants. They were constructive
14 trustees. It says it was -- and now I'm reading -- that first
15 quote was from Page 203. At Page 204 of Mr. Vilar's brief it
16 says "It was never truly the defendant's property and is not
17 subject -- " well, they say it's not subject to forfeiture but
18 the important --

19 THE COURT: But there's been a determination by Judge
20 Sullivan that it is subject to forfeiture and they're
21 attacking that.

22 MR. FRIEDMAN: Right.

23 THE COURT: There is -- right now there's an order
24 that covers it; correct?

25 MR. FRIEDMAN: Yes, and they can attack it however

1 they want but I think when they attack it I would assume --
2 I'm not a party to the proceeding before Judge Sullivan but I
3 would assume that somebody is going to point out to them that
4 they have admitted that it was not their property. So they
5 have no standing to object to forfeiture.

6 At 205 of Mr. Vilar's brief it says the investors --
7 the investors again, the ATGF investors which include Mr.
8 Marcus and Mr. HIKONIG [Ph.] who are my clients and who are
9 sitting behind me. "The investors as the beneficiaries of the
10 constructive trust have an interest in the forfeitable
11 property that is superior to the defendants." So I do not see
12 for the life of me other than Ms. Shevitz who was Mr. Vilar's
13 criminal counsel, her leverage as a negotiator which I suggest
14 to Your Honor is augmented by her purposely absenting herself
15 from today's proceedings but I don't see what leverage she has
16 to say, or Mr. Burger for that matter has to say this should
17 be limited to \$17 million.

18 I submit, and again I know that we're all in
19 opposition because a lot of the discussion today has been
20 about matters that relate more to Judge Sullivan than to Your
21 Honor and I recognize that. But just in the interest of
22 completeness, everything that we've talked about today and
23 that Ms. Levin has talked about today should relate to the \$40
24 to \$45 million that's now in the possession of JPMorgan Chase,
25 not to some agreed on negotiated figure of \$17 million.

1 THE COURT: Thank you. I trust that to the extent
2 the Crime Victims Act would give you a right to be heard in
3 the proceeding before Judge Sullivan or Judge Sullivan is
4 amenable to hearing you in any event you would make those
5 assertions in Judge Sullivan's proceeding because that is the
6 one in which the forfeiture application is being made and the
7 forfeiture orders have been entered.

8 So let's pick a date for the next conference in this
9 matter which is six months out. Ms. Ing, do you have a date?

10 THE CLERK: Yes. Friday, March 30, 2012 at two p.m.

11 THE COURT: So March 30, 2012 at two. And will the
12 SEC again arrange for Mr. Tanaka's telephonic participation?

13 MR. SALZBERG: We will, Your Honor.

14 THE COURT: Thank you. And will the SEC also begin
15 copying the Mayer's counsel on papers filed in this case?

16 MR. SALZBERG: We will, Your Honor.

17 THE COURT: I appreciate that. Will it be acceptable
18 to the SEC if I write an endorsed order on the Mayer's letter
19 to the effect that SEC has agreed to copy the documents to
20 them and that the SEC and the Department of Justice expect to
21 be in touch concerning any potential for some limited
22 distributions since they're not here today or --

23 MR. SALZBERG: Yes, Your Honor, of course.

24 THE COURT: Okay. Very good. Now, Mr. Tanaka, I
25 have a couple of housekeeping issues with you. There was a

1 letter sometime ago that indicated that you had sent some sort
2 of formal answer in this proceeding and it's -- I never
3 received anything in the court and Mr. Salzberg is indicating
4 that he hasn't seen it either.

5 MR. SALZBERG: To the best of my reco --

6 MR. TANAKA: [Inaudible]

7 THE COURT: Yes, Mr. Tanaka.

8 MR. TANAKA: Yes. [Inaudible]

9 THE COURT: I am trying to look now at the docket
10 here because I had written something about it at some point.
11 Just give me a moment.

12 MR. TANAKA: [Inaudible]

13 THE COURT: I'm sorry. Would you repeat that?

14 MR. TANAKA: Yes. [Inaudible] or so.

15 THE COURT: This is a -- this being a civil
16 proceeding I am not certain of the rules regarding the
17 provision to pro se parties at court expense of a transcript.
18 Mr. Salzberg --

19 MR. SALZBERG: Last time I recalled it he had made a
20 similar request and we went ahead and ordered it and sent a --

21 MR. TANAKA: Yes, that's [inaudible].

22 MR. SALZBERG: -- complimentary --

23 THE COURT: If the SEC would take care of that I'd be
24 grateful.

25 MR. SALZBERG: Of course.

1 THE COURT: Thank you. Now, I'm having a little
2 trouble finding -- okay, let's see. In September of 2010 I
3 entered an order saying that we received an August 2010 letter
4 from Mr. Tanaka indicating that he was preparing to assume
5 self representation and requesting appointment of counsel
6 which is the request that I have and continue to hold in
7 abeyance. Then that order continued saying that the court has
8 also received a letter dated August 31, 2010 from Fox
9 Rothchild LLP, Mr. Tanaka's former counsel which refers to a
10 response to the SEC's amended complaint "sent to the court"
11 unbeknownst to them by Mr. Tanaka.

12 The court has not received nor does the docket
13 reflect the filing of a response by Mr. Tanaka. Mr. Tanaka is
14 hereby directed to promptly file with the court via the pro se
15 office and serve on the SEC and counsel for Mr. Vilar his
16 response to the SEC's amended complaint.

17 Mr. Salzberg.

18 MR. SALZBERG: I do not recall having received
19 anything along those lines.

20 THE COURT: And the court has no record of having
21 received anything. Mr. Tanaka, did you ever actually send a
22 document called an answer to the amended complaint to the
23 court or to the SEC?

24 MR. TANAKA: No, I don't think I did.

25 THE COURT: And sitting there now do you have such a

1 document that you intended to file?

2 MR. TANAKA: This is an official document order.

3 THE COURT: It would be something that you prepared.

4 MR. TANAKA: I [inaudible] because I sent [inaudible]
5 various parties. So I think [inaudible].

6 THE COURT: So I've gotten letters from you. You've
7 only sent the letters?

8 MR. TANAKA: Yes, yes, [inaudible] so. I think
9 [inaudible].

10 THE COURT: All right then. One other thing I need
11 you to do is to officially file your notice of appearance pro
12 se in this matter and what my chambers will do is send you a
13 copy of the form that the court uses for pro se people that
14 you will need to fill out and send back to our pro se office.
15 So you'll get that in a few days.

16 MR. TANAKA: Okay. Your Honor, could I again
17 [inaudible] Ms. Levin [inaudible] details behind [inaudible]
18 questions but I was hoping [inaudible] documentation by
19 [inaudible].

20 THE COURT: Mr. Salzberg.

21 MR. SALZBERG: Mr. Tanaka, we are of course happy to
22 continue the negotiations at some point. Maybe the easiest
23 thing to do would be to communicate through email and we can
24 set a time that we can all get on the phone and continue with
25 that work for you.

1 MR. TANAKA: That would be great, yes.

2 MR. SALZBERG: Okay.

3 MR. TANAKA: I have [inaudible] of the [inaudible]
4 that she was [inaudible] that would be fine.

5 MS. LEVIN: Mr. Tanaka, since you're represented by
6 counsel in the criminal case my communications should be with
7 your counsel.

8 MR. TANAKA: [inaudible]

9 THE COURT: So with this email exchange you'll set up
10 a call that everybody who should be on will be on?

11 MR. SALZBERG: We will, Your Honor.

12 THE COURT: All right. Thank you all very much. I'm
13 sorry, sir, did you wish to be recognized?

14 MR. MARCUS: I'd like to with my attorney's
15 permission and my name is Paul Marcus.

16 THE COURT: I think, Mr. Friedman, just so that Mr.
17 Tanaka can hear, can you pull that microphone.

18 MR. FRIEDMAN: Yes, if I don't pull the cord out.

19 THE COURT: Yes, be careful -- I was going to say be
20 slow and careful. I don't know how far it will go but --
21 actually, would you just tell Mr. Friedman what you want to
22 say because it is -- we're an hour and a half into this
23 proceeding and you do have counsel here. So would you tell
24 him what you want to communicate, please? Thank you.

25 [Pause in proceedings.]

1 MR. FRIEDMAN: The point that Mr. Marcus would like
2 to make to the court as well as to counsel at the front table
3 is that the money which is at JPMorgan Chase has not been
4 managed since 2005 is apparently just sitting there. I don't
5 know if JPMorgan since they're not a charitable institution, I
6 am assuming they are deducting custodian fees of some kind but
7 the problem is it's now six years and nobody has been managing
8 the money.

9 THE COURT: And that is one of the questions that I
10 was raising with Ms. Levin and Ms. Levin's indication was that
11 as and when the forfeiture order is entered and the Government
12 actually is in a position to exercise direction and control
13 over that money it will be put in an interest bearing vehicle.

14 MS. LEVIN: Exactly, Your Honor. Thank you very
15 much.

16 THE COURT: All right.

17 MR. SALZBERG: Thank you, Your Honor.

18 THE COURT: Thank you all very much. We're
19 adjourned.

20 THE CLERK: All rise.

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1 I certify that the foregoing is a court transcript from
2 an electronic sound recording of the proceedings in the above-
3 entitled matter.

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5 _____
6 Shari Riemer

7 Dated: October 13, 2011
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